

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Rules and Regulations Implementing )  
Minimum Customer Account Record ) CG Docket No. 02-386  
Exchange Obligations on All Local and )  
Interexchange Carriers )

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> hereby submits  
Comments in response to the Commission's *Notice of Proposed Rulemaking* in this proceeding.<sup>2</sup>

**I. INTRODUCTION**

The Federal Communications Commission (Commission or FCC) asks whether it should impose mandatory minimum Customer Account Record Exchange (CARE) standards on all local exchange carriers (LECs) in order to provide uniform, timely, and complete CARE data for long distance carriers. The NPRM is the outcome of an ATT request that the Commission issue a rule imposing the standard and of AT&T, Sprint, and MCI (Joint Petitioners) petitions proposing that all carriers transmit certain CARE codes principally to IXC's that claim they need mandatory

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1 NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

2 *In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, Notice of Proposed Rulemaking* (NPRM), CG Docket No. 02-386, FCC 04-50 (rel. Mar. 25, 2004).

standards to obtain specific billing information and customer data for customers that switch service or port their numbers.

The Commission has focused this proceeding on Joint Petitioners' recommendation that it adopt a Minimum CARE Standard composed of a subset of the existing Ordering and Billing Forum OBF CARE/Industry Support Interface guideline Transaction Code Status Indicators (TCSIs).<sup>3</sup> The Commission also seeks comments on (1) whether the minimum standards should apply to all LECs, (2) whether LECs should be required to notify the presubscribed long distance carrier whenever the customer changes its local provider; (3) whether LECs that no longer serve a particular end user customer should be required, upon request of a long distance carrier, to indicate which other carrier is providing local service to that customer and (4) whether all wireline carriers should be required to report names of standalone IXC customers that have ported their numbers to wireless carriers. The Commission also seeks comment on the expected implementation costs associated with adopting minimum standards and on the appropriate allocation of those costs.

## **II. THE COMMISSION SHOULD CONSIDER OTHER ALTERNATIVES BEFORE IMPOSING MANDATORY REQUIREMENTS ON SMALL RURAL ILECS**

The Commission should consider less burdensome alternatives before it imposes a mandate expected to involve substantial burdens and costs on small rural ILECs. The record before the Commission indicates that small LECs handle customer account data in a number of different ways. Some NECA pool members still process presubscribed interexchange charges (PIC) on a manual basis and some use the CARE mechanized process.<sup>4</sup> The proposed changes

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3 *Id.*, at paras 3 and 11. The Alliance for Telecommunications Industry Solutions (ATIS) develops standards and operational guidelines for the telecommunications industry. Its Carrier Liaison Committee created the OBF which established voluntary CARE standards<sup>3</sup>.

4 See, January 21, 2003 Comments of the Small Incumbent Local Exchange Carriers in *Petition for Declaratory Ruling and or Rulemaking* at 2 (Petition for Declaratory Ruling) (CC Docket No. 02-386) and of NECA at 3.

are likely to require small ILECs to modify their processes to comply with a uniform standard. Also, there are comments indicating that LECs that rely on centralized equal access networks to provide the data may need to develop new processes to provide data directly to IXC.<sup>5</sup>

The Regulatory Flexibility Act (RFA) requires that the Commission take steps to minimize adverse economic impacts on small entities like the small rural ILECs that would be affected by the proposal.<sup>6</sup> The RFA therefore requires that the Commission consider less burdensome alternatives than mandatory standards and that it balance the added costs and burdens a mandate would impose on small ILECs against the statutory objectives that the new mandate seeks to achieve.

The proposed CARE standards are based on the Commission's authority to prevent illegal changes in subscriber carrier selections. 47 U.S.C. § 258. The prevention of consumer choice and the prevention of consumer confusion is the primary goal of Section 258. It is not apparent that the minimum standards will promote this goal. The standards are not designed to address the Commission's legitimate interests in preventing "slamming" but, instead, to make it easier for IXCs to bill their customers. It is not apparent that this rule is necessary or that it would enhance existing rules that prohibit slamming.<sup>7</sup> The economic interests of the IXCs are the interests which should be balanced against the goal of minimizing the adverse economic impact that new and additional regulations impose on small ILECs. A proper balancing of these burdens requires, at a minimum, that any new cost burdens associated with a mandatory standard be placed squarely on the IXC beneficiaries that propose the rule.

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<sup>5</sup> *Id.*

<sup>6</sup> 5 U.S.C. § 604(a)(5).

<sup>7</sup> In fact, the Commission has reported a consistent decrease in consumer "slamming" complaints over the last four quarters. *See*, quarterly reports on Informal Consumer at Inquiries and Complaints, at <http://www.fcc.gov/cgb>.

The Commission has a record of comments that suggest other alternatives to a mandatory standard. While the Joint Petitioners make it clear that a mandatory standard would serve their needs, they have not demonstrated why their interests cannot be achieved through their own efforts or the voluntary industry process set up to handle these issues. A voluntary solution is more appropriate in today's deregulatory environment that is characterized by evolving services and technologies. It is not clear, for example, whether the proposed standard will be workable in a VoIP environment where the ILEC is unlikely to have any of the customer data that the IXCs need to manage their relationships with discontinued customers. The Commission has a record of comments indicating that mandatory rules may not be necessary because the issues raised by the Joint Petitioners is being considered by the OBF, an industry forum better suited to resolving billing issues.<sup>8</sup>

### **III. THE IXCS THAT SUPPORT THE MANDATORY RULE SHOULD BEAR THE COSTS ASSOCIATED WITH ANY MANDATE THE COMMISSION IMPOSES**

Each of the factors listed as essential in the NPRM identify benefits that will accrue to the IXCs.<sup>9</sup> The carriers that stand to benefit from the uniform standards should bear the costs associated with the requirement. Small ILECs and their customers should not be responsible for costs associated with implementing or maintaining any of the systems that might be needed to comply with a uniform standard. These carriers' customers are located in high cost rural areas and they already bear the burden of higher subscriber line charges and other enduser charges associated with local number portability. It can be expected that the costs of implementing a minimum standard will have a greater impact on small carriers with fewer customers over which to spread the costs. Every effort should be made to minimize the adverse impact of these costs.

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<sup>8</sup> NECA Comments to Petition for Declaratory Ruling at 4, and Verizon at 8.

<sup>9</sup> NPRM at para. 11.

The Commission should avoid any temptation to impose these costs on incumbents alone or on hypothetical beneficiaries as it did in adopting cost recovery rules for local number portability. The proposed mandate offers no comparable competitive or consumer benefit to that relied upon by the Commission in deciding to place the costs of local number portability on ILECs and ILEC customers who obtain no benefit from other callers' ported numbers. The IXCs have long been declared non-dominant and should receive no special treatment allowing their costs to be placed on other carriers based on a purported need to foster competition for long distance services.

If the Commission imposes a mandate, it should provide for cost recovery from the carriers who benefit directly or it should provide that small rural ILECs must recover these costs in the interstate jurisdiction through access charges or some other mechanism. This will avoid undue or harsh impacts on individual small carriers and their customers and promote stable and affordable local rates in rural high cost areas consistent with universal service goals. The Commission should also apply any mandate it imposes on ILECs across the board to all LECs to ensure that no set of carriers is disadvantaged while others are relieved of the burden of compliance.

#### **IV. THE INITIAL REGULATORY FLEXIBILITY ANALYSIS FAILS TO IDENTIFY FEDERAL RULES THAT MAY DUPLICATE, OVERLAP OR CONFLICT WITH THE PROPOSED MANDATE**

The RFA requires that the Initial regulatory flexibility analysis (IRFA) contain, to the extent practicable, an identification of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.<sup>10</sup> The IRFA published with this NPRM states incorrectly that

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<sup>10</sup> 5 U.S.C. § 603(b) (5).

there are no Federal rules in this category.<sup>11</sup> Both the Customer Proprietary Network Information (CPNI) requirements of Section 222 of the Act, the Commission's CPNI rules, and the Commission's rules for changing long distance service potentially duplicate, conflict with or overlap the proposed rule. Section 222 of the Act, for example, imposes a general duty on telecommunications carriers to protect the confidentiality of propriety information. A carrier can use CPNI only in limited circumstances as specified in section 222(c)(1) and 222 (d) and by 47 C.F.R. § 64.2005. Notifying IXCs that a customer has changed or discontinued service or ported their number is not one of the specified exceptions in the FCC's CPNI rules. There is obviously potential overlap between the proposed rule and the CPNI rules. The IRFA should, at least, seek comment on whether the CPNI rules conflict with the proposed rule. Similarly, the slamming provisions in 47 C.F.R. Sec. 64.1100 *et seq.* potentially conflict with the proposed rule. Those regulations spell out in great detail a carrier's obligation to process, report and verify a customer's change of its long distance carrier. They specify processes which potentially overlap the proposed rule.

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<sup>11</sup> Appendix B to NPRM, p. 7.

## VI. CONCLUSION

For the above stated reasons, the Commission should consider other alternatives to achieving the goals of Section 258 before adopting a minimum CARE standard. It should also request comment on other Federal Rules which duplicate, overlap or conflict with the proposed rule.

Respectfully submitted,

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June 3, 2004

## CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association, CG Docket No. 02-386, FCC 04-50 was served on this 3<sup>rd</sup> day of June 2004 by first-class, U.S. Mail, postage prepaid, to the following persons.

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